

## **BOARD FOR CONTRACTORS COMMITTEE MEETING MINUTES**

The Board for Contractors Committee (The Committee) met on Tuesday, February 27, 2007, at the Department of Professional and Occupational Regulation (DPOR), 3600 West Broad Street, Richmond, Virginia. The following Committee members were present:

Robert M. Kirby, Chairman  
Michael D. Redifer, Vice Chairman  
Jeffrey Modisett  
Anthony Orange  
Ann Rackas Pate

Committee member Mark Cronin was not present.

The following DPOR staff attended the meeting:

Karen O'Neal, Deputy Director  
Nick Christner, Deputy Director  
Eric L. Olson, Executive Director  
Kevin Hoeft, Regulatory Boards Administrator  
Karen Kenney, Administrative Assistant  
Jennifer Kazzie, Compliance and Investigations Division  
Ana Larrabaster, Licensing Specialist

Chairman Robert Kirby called the meeting to order at 1:02 p.m.

**Call To Order**

The Meeting Agenda was approved unanimously. Motion made by Mr. Orange and seconded by Mr. Redifer.

**Approval of Agenda**

The Minutes from the November 28, 2006, Committee meeting were adopted as drafted by unanimous vote. Motion made by Mr. Orange, seconded by Ms. Rackas Pate.

**Minutes Adopted**

There was no Public Comment.

**Public Comment**

Three education providers appeared before or submitted written requests to the Committee.

**Education Provider Applicants**

Steve Owens of National Code Seminars (NCS) requested Committee and Board approval of its eight-hour Contractor Prelicense Education course. Executive Director Eric Olson provided NCS with provisional approval for this class on December 27, 2006. NCS's course syllabus is based on using the NASCLA "Business and Project Management for Contractors – Virginia Edition" as the course textbook.

**National Code Seminars**

After discussion, and a motion by Mr. Orange, seconded by Mr. Redifer, the Committee unanimously recommended that the Board approve National Code Seminar's eight-hour contractor prelicense education course.

Wane Kim of Millennium Institute of Construction (MIC) requested Committee and Board approval of its eight-hour Contractor Prelicense Education course. MIC's course syllabus is based on a resource manual and binder which includes the publication, "How to Succeed with your own Construction Business." MIC will alternately teach the course in English and Korean.

**Millennium Institute of Construction**

After discussion, and a motion by Mr. Orange, seconded by Mr. Redifer, the Committee unanimously recommended that the Board approve Millennium Institute of Construction's eight-hour Prelicense Education course as presented.

Camille C. "Toni" Ewell requested Committee and Board approval of her eight-hour Prelicense Education course. After review, the Committee, while commending the course's emphasis on business principles, was unable to provide this course with a recommendation for approval based on concerns that the course lacks material on operating a "contracting" business. After discussion, and a motion by Ms. Rackas Pate, seconded by Mr. Orange, the Committee unanimously recommended that Ms. Ewell revise her course to include more material on operating a contracting business and submit the revised course to the Board for approval.

**Camille C. "Toni" Ewell**

Ellsworth Weaver has submitted an application as a Contractor Prelicense Education provider and inquired whether the Board has established an acceptable range of fees for charging students who take the prelicense class. It was pointed out that the Board has set no range of fees for the amount an approved education provider can charge students who take the Prelicesne or Remedial Education course.

**Ellsworth Weaver**

Jimmy Demmel of the Elevator Constructors Local Number 10, Harry Gilbert, Jr. of the International Union of Elevator Constructors Local Number 51, and Gil Duncan of the International Union of Elevator Constructors Local Number 52, requested Committee and Board approval of the National Elevator Industry Educational Program (NEIEP) as a Certified Elevator Mechanic examination-exempt program pursuant to 18 VAC 50-30-40.C.2 of the *Board for Contractors Individual License and Certification Regulations*, effective April 1, 2007. The NEIEP Elevator Mechanic training program consists of four years of practical experience, 576 hours of formal vocational training, and a comprehensive examination at the end of the program.

**National Elevator  
Industry Educational  
Program**

**Elevator Mechanic  
Examination Exempt  
Training Program**

After discussion, and a motion by Mr. Orange, seconded by Ms. Rackas Pate, the Committee unanimously recommended that the Board approve (NEIEP) as a Certified Elevator Mechanic examination-exempt program pursuant to 18 VAC 50-30-40.C.2 of the *Board for Contractors Individual License and Certification Regulations*, effective April 1, 2007.

Jimmy Demmel of the Elevator Constructors Local Number 10, Harry Gilbert, Jr. of the International Union of Elevator Constructors Local Number 51, and Gil Duncan of the International Union of Elevator Constructors Local Number 52, requested Committee and Board approval of the National Elevator Industry Educational Program (NEIEP) on-line continuing education program pursuant to 18 VAC 50-30-120.C and 18 VAC 50-30-220.A of the *Board for Contractors Individual License and Certification Regulations*, effective April 1, 2007.

**Elevator Mechanic  
Continuing Education**

After discussion, and a motion by Mr. Orange, seconded by Mr. Modisett, the Committee unanimously recommended that the Board approve NEIEP's on-line continuing education program pursuant to 18 VAC 50-30-120.C and 18 VAC 50-30-220.A of the *Board for Contractors Individual License and Certification Regulations*, effective April 1, 2007.

Jessica Weaver, Jim Bostaph and Kevin Stewart of Black Goose Chimney Sweep stated that they have encountered inconsistency among local building official offices in their ability to pull building permits for the installation, modification and repair of chimney and fireplaces.

**Add Fireplace and  
Chimney Contracting  
Specialty and Venting  
Specialist Individual  
Certification**

They requested Committee and Board consideration of amending the *Board for Contractors Regulations* to add a Contracting Specialty Service that addresses

specifically the installation, modification and repair of fireplaces and chimneys. It was pointed out that the Board has previously determined that a Home Improvement Contracting (HIC) specialty license is needed to install an unvented gas prefabricated fireplace, an HVAC contracting or tradesman license is needed to install or modify a venting system, and a contractor licensed to perform masonry work is authorized to install brick, concrete, block, stone, marble, slate or other types of masonry chimneys. Mr. Redifer also pointed out that each jurisdiction has a *Local Building or Fire Code Board of Appeals* that considers disputes between contractors and local building official interpretations.

Ms. Weaver, Mr. Bostaph and Mr. Stewart also requested Committee and Board consideration of amending the Board for Contractors Tradesman Regulations to include "Venting Specialist" as an individual certification program. Mr. Redifer pointed out that the Board for Contractors does not have the authority to require a new individual certification program. This would require a statutory change and can only be done by the action of the Virginia General Assembly.

The Committee noted in past meetings that Highway/Heavy (H/H) contractors are authorized to "install water, gas, and sewer connections to residential, commercial, and industrial sites, subject to local ordinances." He pointed out that some H/H contractors install water and sewer lines on private property. Other H/H contractors install backflow prevention devices. Both of these actions appear to go beyond what the Board's regulations authorize for H/H contractors.

**Definition of  
Highway/Heavy  
Contractors**

To resolve this issue, Mr. Redifer proposed the following possible amendments to the definition of "Highway/heavy contractors" in 18 VAC 50-22-20 of the *Board for Contractors Regulations*:

**EXISTING**

4. Water, gas and sewer connections to residential, commercial, and industrial sites, subject to local ordinances.

**OPTION #1**

4. Water, gas and sewer connections to residential, commercial, and industrial sites, subject to local ordinances and provided that the installation will be maintained by a public utility company or local government.

**OPTION #2**

4. Water, gas and sewer connections to residential, commercial, and industrial sites, to any point outside the exterior walls of any building on the site, subject to local ordinances.

After discussion, and a motion by Mr. Redifer, seconded by Mr. Orange, the Committee unanimously recommended that the Board approve Option # 2 for amending the definition of "Highway/heavy contractors" in 18 VAC 50-22-20 of the *Board for Contractors Regulations*.

Assistant Director of Adjudication Jennifer Kazzie requested Committee and Board approval to amend 18 VAC 50-22-210 of the *Board for Contractors Regulations* due to problems encountered with licensees who change their business entity but fail to obtain a new license.

**Change of Business  
Entity Requires a New  
License**

After discussion, and a motion by Mr. Redifer, seconded by Mr. Kirby, the Committee unanimously approved this proposal in principle and instructed Board staff to work with Ms. Kazzie on the proposal's language.

Director of Adjudication Doug Schroder requested Committee and Board approval to amend 18 VAC 50-22-260.B.7 of the *Board for Contractors Regulations* by adding the words, "or the board" to the end of this regulation to expedite the Board's ability to take disciplinary action against a regulant that was the source of a Contractor Recovery Fund Claim payment.

**Prohibited Act 18  
VAC 50-22-260.B.7**

The Board must determine that a regulant engaged in "improper or dishonest conduct" in the practice of contracting as a condition for awarding a Contractor Recovery Fund claim. By adding the words "or the board" to the end of the current language in 18 VAC 50-22-260.B.7, a disciplinary case can be opened immediately against the same regulant, and this case can be brought quickly before the Board for disciplinary action.

This is important because, although § 54.1-1126 of the *Code of Virginia* requires the immediate license revocation of the regulant who was the source of the Contractor Recovery Fund Claim payment, a regulant who has its debts discharged by filing bankruptcy is exempt from having its license revoked because of a Contractor Recovery Fund Claim payment. However, if the Board revokes the license of the same regulant through disciplinary action, there is no such exemption.

After discussion, and a motion by Ms. Rackas Pate, seconded by Mr. Redifer, the Committee unanimously recommended that the Board amend 18 VAC 50-22-260.B.7 of the *Board for Contractors Regulations* by adding the words, "or the board" to the end of this regulation.

Michelle Nicholson of Purcellville e-mailed Board staff and requested that the Board amend 18 VAC 50-22-260.9 of the *Board for Contractors Regulations* to include: 1) an attorneys' fees provision clause, and 2) a binding arbitration clause.

**Prohibited Act 18  
VAC 50-22-260.B.9**

Board Counsel advised the Committee that the Board does not have the authority to include in its regulations, provisions dictating that licensed contractors and/or certificate holders include in their contracts, provisions for the awarding of attorneys fees or for binding arbitration.

After discussion, and a motion by Mr. Redifer, seconded by Mr. Rackas Pate,

the Committee unanimously recommended that Board staff write a letter to Ms. Nicholson advising her of this.

Board staff received a letter from Benjamin M. Butler, Esq., requesting Board clarification concerning the term “Owner-developer” as defined in § 54.1-1100 of the *Code of Virginia* and the “Owner-developer” exemption in § 54.1-1101.11 of the *Code of Virginia*.

**“Owner-Developer”  
Exemption**

Mr. Butler represents an owner-developer who has residential and commercial projects in Frederick County and Shenandoah County. The owner-developer has 12 projects and each project is set up under a different limited liability company. The owner-developer buys raw land and improves it by constructing streets and infrastructure. Typically each project involves at least \$750,000 in installing road and other infrastructure necessary to the development of the project. The owner-developer contracts with licensed Class A Contractors to make these improvements. The owner-developer does not construct housing on the property, but rather sells lots to either national homebuilders or local contractors.

For each project, the particular LLC makes application for a local business license from the Commissioner of the Revenue. The Frederick County Commissioner of the Revenue’s Office will only issue a local business license for jobs valid up to \$1000 to each LLC. The Commissioner of the Revenue has indicated that each LLC must have a Class A Contractor’s license before it can sell any lots in any projects, assuming that the lots, roads and infrastructures for each project will exceed \$120,000, in accordance with the definition of a Class A Contractor in § 54.1-1100.

After considering this matter, The Committee determined that the legal interpretation and practical application of owner-developer in § § 54.1-1100 and 54.1-1101.11 of the *Code of Virginia* are matters outside of the Board for Contractors’ authority.

Board staff received a letter from Eugene W. Browning, P.E., P.C., who inquired whether he would need to be a licensed contractor to supervise or direct in any way, the construction of a commercial building for his own use.

**Commercial Building  
Exemption**

The Committee determined that the exemption in § 54.1-1101.9 of the *Code of Virginia* no longer allows an exemption from having a contractor’s license for individuals who want to “construct” a commercial building for their own use.

Kevin Hoeft updated the Committee regarding possible reciprocal examination/licensing agreements concerning the Kentucky Journey and Master Tradesman Plumbing Licenses, the Washington state Journeyman Electrical and Plumbing Licenses and the Oregon Journeyman Plumber and Journeyman and Supervisor (Master) Electrical Tradesman Licenses.

**Reciprocity Update**

Board staff sent cover letters and information packets with the Board's entry requirements for the above-mentioned tradesman licenses so that these states can determine whether their entry requirements are substantially equivalent to Virginia's.

There was no old business.

Licensed contractor David Sider addressed the Committee concerning the problem of licensed contractors hiring unlicensed contractors, especially in Northern Virginia and whether the Board will investigate anonymous complaints regarding this matter. Deputy Director of Compliance and Investigations (CID) Nick Christner informed the Committee that CID accepts and will investigate anonymous complaints as long as enough information is provided in the complaint to establish probable cause of a regulatory violation.

Chairman Kirby entertained a motion to adjourn from Ms. Rackas Pate, seconded by Mr. Redifer and approved unanimously by the Committee. The meeting adjourned at 4:00 p.m.

**Old Business**

**New Business**

**Licensed Contractors  
Hiring Unlicensed  
Contractors**

**Adjourn**

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Robert M. Kirby, Chairman

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Date